KRIEG DEVAULT

Insights

SEA 370 Signed Into Law, Effective Immediately

April 23, 2021

Indiana Governor Holcomb signed Senate Enrolled Act 370 into law yesterday, providing a clear restatement of the statute of limitations to be applied for purposes of resolving disputes regarding deposit accounts. **As we have written extensively over the past two years**, Indiana's banks and credit unions are being targeted by the plaintiffs' bar with class action litigation alleging violations of law based on overdraft and NSF fee practices. Indiana law has long held, *"[a]n action upon promissory notes, bills of exchange, or other written contracts for the payment of money executed after August 31, 1982, must be commenced within six (6) years after the cause of action accrues."* IC 34-11-2-9 ("Emphasis added"). Deposit accounts, as a liability held by a depository payable to the depositor pursuant to the terms of a written account agreement, fall clearly within the scope of this statutory limitation. However, in over a dozen class action overdraft and NSF cases in the past two years in Indiana alone, plaintiffs' lawyers have argued that actions based on deposit account agreements should instead be subject to the ten (10) year statute of limitations applicable to all written contracts under IC 34-22-2-11.

SEA 370, effective immediately with the Governor's signature, leaves little doubt as to the applicable timeframe for potential damages in these actions. The bill adds the term "deposit account" to the list of written contracts subject to the six (6) year statute of limitations. Further, the bill leaves no doubt as to the what the applicable statute of limitations with respect to depository accounts has been all along, with the addition IC 34-11-2-0.5 that provides, *"The amendments to section 9 of this chapter made during the 2021 regular session of the general assembly are intended to be a restatement of the law and not a substantive change in the law and as such shall be applied with respect to deposit accounts executed during the applicable time frames set forth in section 9 of this chapter."*

The Krieg DeVault Financial Services litigation team is actively engaged in the defense of banks and credit unions in several ongoing overdraft and class action cases against banks and credit unions in Indiana, and beyond, and ready to assist your institution as needed.